CHARLES L. FIRESTEIN, P.C. 1 Charles L. Firestein, #002986 7227 N 16th Street, Ste 124 Phoenix, Arizona 85020 3 [602] 235-9000 Fax (602) 235-9040 charles@firesteinpc.com 4 Attorney for Movant AMERICAN HONDA FINANCE CORPORATION ("AHFC") 5 6 IN THE UNITED STATES BANKRUPTCY COURT 7 FOR THE DISTRICT OF ARIZONA 8 IN RE: 9 CHAPTER 7 PROCEEDINGS **ELIZABETH ANN HARKISON,** 10 Debtor, 11 CASE NO: 2:11-bk-26980-RTB 12 AMERICAN HONDA FINANCE CORPORATION ("AHFC"), its 13 assignees and/or successors in interest. 14 Movant, 15 VS. 16 ELIZABETH ANN HARKISON, 17 **DEBTOR**; MAUREEN GAUGHAN, TRUSTEE, 18 Respondents. 19 20 MOTION FOR RELIEF FROM THE AUTOMATIC STAY 21 COMES NOW, AMERICAN HONDA FINANCE CORPORATION ("AHFC"), its 22 assignees and/or successors in interest (Movant), hereby moves and applies to the 23 court for an order modifying the stay provided by 11 U.S.C. § 362 and the other stays 24 against lien enforcement with respect to the property described below, and proceeds; 25 and enjoining or conditioning the use, sale, or lease of such property, as necessary to 26 27 provide adequate protection of Movant's interest in the property. 28 The relief requested is more particularly set forth in the following memorandum of

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points and authorities, upon which this motion and application is based.

RESPECTFULLY SUBMITTED this January 9, 2013.

CHARLES L. FIRESTEIN, P.C.

/s/ Charles L. Firestein #002986
Charles L. Firestein, Esq.
Attorney for Movant

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS: The facts relevant to Movant's Motion for Relief from the Automatic Stay are summarized as follows:

- The Debtor originally filed a Chapter 7 Bankruptcy under the Bankruptcy
 Code on September 21, 2011.
- 2. On or about November 7, 2009, said Debtor entered into a Motor Vehicle Retail Installment Sales Contract and Purchase Money Security Agreement with Movant for the purchase of a 2007 HONDA PILOT LX, vehicle ID# 5FNYF18107B005991 (collateral) (See Exhibit "A" attached hereto).
- 3. Said Motor Vehicle Retail Installment Sales Contract and Purchase Money Security Agreement was assigned to Movant which thereupon filed and perfected its liens on the collateral described herein by noting said lien on the Title (See Exhibit "B" attached hereto).
- 4. At the time of filing the Petition for Relief the Debtor was indebted to Movant in the amount of \$19,121.77, and at present owes Movant for missed payments, the sum of \$671.99. The value of the collateral is approximately \$14,975.00. As such, after taking into account the cost of retaking, reconditioning, selling, attorney fees, etc., there is no equity in this collateral for either the Debtor or the Estate.

LAW:

- 5. The Debtor is delinquent on the accounts since November 22, 2012 and there has been no offer of adequate protection to Movant to protect the value of the collateral. Furthermore, the Debtor has no equity in said collateral and because this is not a Chapter 11 or Chapter 13, the requirement that the collateral is necessary for an effective reorganization is inapplicable. The Debtor has received his/her discharge and the Automatic Stay has been vacated as to him/her. AMERICAN HONDA FINANCE CORPORATION ("AHFC") is seeking to have the Stay lifted against the Estate's interest insofar as this matter is still open.
- 6. Movant has incurred, or may incur, certain costs, including, without limitation, attorney fees, taxes, insurance premiums, court costs, costs of sale, and other costs, all of which are secured by the subject Motor Vehicle Retail Installment Sales Contract and Purchase Money Security Agreement.

(A) <u>AUTOMATIC STAY:</u>

Pursuant to 11 U.S.C. § 362(d) Movant is entitled to relief from the Automatic Stay to enforce its lien on either of two grounds: (1) for cause including lack of adequate protection of an interest in the Property, or (2) the Debtor hasno equity and the Property is not necessary to any effective reorganization. Implicit in the second of these is that, unless a reorganization is cotemplated and feasible, a creditor is entitled to relief from the automatic stay if the Debtor has no equity in the Property. E.G., Frankford Trust Company v. Dublin Property, (In re Dublin Properties), 4 C.B.C. 2d 885, 889 (E.D. Pa., Bankr., 1981).

On only one issue does a Movant requesting relief from the stay have the burden of proof and that is the issue of the Debtor equity in the Property. On all other issues

any party opposing relief has the burden of proof. 11 U.S.C. § 362(g). Unless a party opposing relief produces evidence on these points, a Movant is entitled to relief without presenting any evidence whatsoever. See Gauvin v. Wagner (In re Gauvin), 8 C.B.C. 2d 359, 361, 10 BCD 219, 24 B.R. 578 (9th Cir BAP 1982). Moreover, if a party opposing relief alleges that an "equity cushion" furnishes adequate protection, then that party must produce evidence and carry the burden of proof even on the issue of equity. Id.

(B) PRELIMINARY HEARING:

As noted above, any party resisting relief from the automatic stay or seeking to use property of the estate must carry the burden of proof on the issue of adequate protection. A party requesting relief from the stay receives it automatically 30 days after the date of its request unless the Court after notice and hearing orders the stay extended. 11 U.S.C. § 362(e). Moreover, at a preliminary hearing on a request to lift the stay, the Movant is entitled to relief unless the party resisting relief presents evidence and the Court finds that there is a "reasonable likelihood" the resisting party "will prevail at the final hearing." 11 U.S.C. § 363(c)(3) and § 362(e)(1). See <u>Dublin Properties</u>, 4 C.B.C. 2d at 889.

REQUEST FOR RELIEF:

For the reasons set forth above, Movant respectfully requests:

1. That all stays, including without limitation, injunctions, restraining orders, and the automatic stays provided by 11 U.S.C. §362 and §524, be vacated with respect to the Property, or modified to permit Movant, or its agents, attorneys, employees and assigns and such other persons as the Court shall deem appropriate to take any and all actions to enforce its claim to and assert its ownership rights to the Property under the subject Contract, and non-bankruptcy law, including without limitation the rights: to

declare all sums to be immediately due and payable; and to obtain possession of the property, either through self-help or an action in any Court of competent jurisdiction.

2.Movant is also requesting that the Court allow Movant to immediately secure its collateral/property without having to wait ten days from the date of this Order as otherwise required under Rule 7062. Good cause exist for this insofar as the property which is in question is both depreciable and mobile and there is always concern by Movant with reference to this type of property concerning the continued use by the Debtor when payments are not being made. Movant has no objection to waiting ten days with reference to the sale after entry of Order.

CONCLUSION:

For the reasons set forth herein, Movant requests entry of an Order Modifying Stays against lien enforcement; and granting such other and further relief as is just.

RESPECTFULLY SUBMITTED this January 9, 2013.

CHARLES L. FIRESTEIN, P.C.

/s/ Charles L. Firestein #002986
Charles L. Firestein, Esq.
Attorney for Movant

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Marital Community Property Johnson: The under and the indensigned. In proordance with A.R. SELLEY, PRIORITO SIGNING BELOW, OF A	original spasse of the Quarterlay joins in the evention of this pasture, for the propriet of binding the makest property of the Quarterlay is, § 25-14 to other applicable with Tel UNICABIONED SPOUSE OF THE QUARANTOR ADMINORALEDGES RECEIPT FROM THE SEPARATE PROPRIET DE ORDINATIONS
Deta	Spouse of the Guaranter
L	

ARRESTRATION LANGUES.

PLEASE REVIEW - MEDICATION LANGUES COUR LEGAL MIGHTS

THESE YOU OR WE MAY CHOOSE TO HAVE ANY DISPUTE BETWEEN US DECIDED BY ARBITRATION AND NOT IN COURT OR BY
JAY TRAU.

ARIZONA CERTIFICATE OF TITLE 15530421 5FNYF18107**D0059**91 02/2007 AMERON HONDA FIN CORP P O BOX 997500 SACRAMENTO CA 95899-7509 Title Number 0036732 045H009349056 12152009 Pravious Title Number lous Film Mumber JÓ1786AKO5 01172009 66AKC09017010 Arbum Grande State Previous Brand Previous Brand ADDITIONAL BRAND INFORMATION WILL BE PRINTED HERE IN THE FUTURE. **ELIZABETH A HARKISON** AZ 852080094 MESA PO BOX 51873 .iemnoldera LIEN DATE: 11072009 **FIRST LIEN-**AMERÓN HONDA FIN CORP SACRAMENTO P O BOX 997509

VOID WITHOUT EAGLE WATERMARK OR IF ALTERED OR ERASED